Remarks

Claims 1-24 and 26 are presently pending in the subject application. Reconsideration and allowance in view of the above amendments and the following remarks are respectfully requested.

The specification has been amended herein to update the priority data.

Claim 25 has been canceled herein without prejudice to the prosecution of the subject matter of this claim in this or a future continuing application.

Claim 1 has been amended herein to clarify the claim language. Consistent with Applicants disclosure at, for example, page 4, lines 14-16, and page 20, lines 8-9, the amended language indicates that the inner wall is downwardly tapered. The amended claim language also stresses that the striations are formed in the inner wall and have a thickness. Support for these amendments to claim 1 can be found in the specification at, for example, page 22, lines 22-24 (the striations may be formed on either or both surfaces of the inner wall), and page 38, lines 3-6 (the thickness of the striations is less than the thickness of surrounding areas of the inner wall). Claim 1 has also been amended to recite that the cap is a plastic cap. Support for this amendment can be found in the specification at, for example, page 15, lines 14-15.

Claim 2 has been amended herein to delete structure from this means claim.

Claim 3 has been amended herein consistent with the amendments to claim 1.

Claims 4 and 5 have been amended herein to simplify the claim language.

Claim 13 and 14 have been amended herein to recite preferred embodiments of the cap described at, for example, page 4, lines 14-16, and page 20, lines 8-9, of the specification.

Claim 19 has been amended herein to recite that the striations are radially extending grooves. This amendment is supported in the specification at, for example, the last paragraph on page 5.

Claim 26 is newly added herein and recites the cap of claim 2 in fixed association with an open end of a fluid-holding vessel, thereby forming a leak-proof collection device. Support for this new claim can be found in the specification at, for example, the paragraph bridging pages 39 and 40, along with the description of the problem to be solved by the claimed cap and collection device in the background section of the specification.

Prior Art Rejections

The claims are rejected under 35 U.S.C. §§ 102(b) and 103(a) as either being anticipated by Koch *et al.* (U.S. Pat. No. 5,578,272) or unpatentable over Koch in combination with Percarpio (U.S. Pat. No. 4,338,764), Nelson (U.S. Pat. No. 795,642), or Sandhage (U.S. Pat. No. 2,906,423). To support these rejections, it has been noted that Koch discloses a plastic cap having slots, which the Examiner contends constitute striations. What Koch in fact discloses, and Figure 9 illustrates, is the formation of slots 94, 95 in a conical wall 85 of a closure 34 by the cutting blade 87, 88 of a spike 90 used to perforate the conical wall 85. The slots 94, 95 formed in the conical wall 85 serve to vent air from a container 31 during a pipetting operation. *See* Koch at col. 4, lines 17-24.

The claimed caps distinguish over the closure 34 of Koch in that the recited striations are not openings in a cap wall, as in the case of Koch's slots 94, 95, but rather formations in an inner wall, such as grooves, that have a thickness. *See, e.g.*, specification at page 38, lines 3-6. As the specification teaches, the purpose of the striations is to weaken the inner wall, making it easier to penetrate with a fluid transfer device, without allowing the passage of fluid materials from an associated vessel prior to penetration. *See, e.g.*, specification at last paragraph on page 5. And, understanding that the striations of the claimed caps have a thickness, it would be improper to now to interpret the slots 94, 95 of Koch as being the equivalent of the claimed striations, as this would alter their principal of operation, which is to vent air from within a container 31. *See* MPEP § 2143.01 (proposed modification of the prior art cannot change its principal of operation).

The secondary references relied upon by the Examiner do not cure the deficiencies of Koch. Although Nelson is relied upon for disclosing "slits," a slit is a cut, which is not the equivalent of a striation having a thickness. *See* Nelson at sentence bridging columns 1 and 2. Moreover, as presently claimed, the striations are formed in a plastic cap, not an elastomeric material. *See* Nelson at paragraph 1, lines 42-44. And, as noted in the specification at page 36, lines 15-18, and in Figure 8, the wedge-shaped sections of a plastic cap according to the claimed invention are less than fully

resilient, such that the caps will permit the passage of liquids following penetration with a fluid transfer device. The closure 31 of Koch is likewise a plastic. Thus, modifying the plastic closure 31 of Koch to include the slits of Nelson's elastomeric stoppers would allow liquids to pass through the closure after penetration with a fluid transfer device, as the edges defining the slits of a plastic closure would not form a seal, either before or after penetration of the closure with a fluid transfer device, thereby changing the principal of operation of Nelson's stoppers. *See* MPEP § 2143.01.

For the reasons set forth above, Applicants submit that the presently pending claims are fully patentable in view of the cited references. Accordingly, withdrawal of the Examiner's Section 102 and 103 rejections is hereby respectfully requested.

Double Patenting Rejection

Claims 1-25 stand rejected by the Examiner on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4, 7-20 and 23-38 of U.S. Patent No. 6,763,396. Without addressing the merits of the Examiner's argument, Applicants submit that this rejection is overcome by their Terminal Disclaimer filed herewith. Accordingly, withdrawal of this rejection is hereby respectfully requested.

Conclusion

Based on the amendments and remarks, Applicants submit that the presently pending claims are in condition for allowance and notice to that effect is hereby respectfully requested.

No fee is believed due in connection with this Reply. If Applicants are mistaken, then please charge any amounts due to Deposit Account No. 07-0835 in the name of Gen-Probe Incorporated.

Respectfully submitted,

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